INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	1
Statute involved	2
Statement	2
Specification of errors to be urged	5
Reasons for granting the writ	5
Conclusion	11

CITATIONS

Cases:	
Inland Waterways Corp. v. *Young*, Oct. Term, 1939, No. 6, decided March 25, 1940	9
McFeely v. *Commissioner*, 296 U. S. 102	9
Paramount Publix Corp. v. *American Tri-Ergon Corp.*, 293 U. S. 528	11
Sweeney v. *United States*, 82 C. Cls. 640	5
Statutes:	
Act of January 28, 1881, c. 30, 21 Stat. 321	9
Act of September 29, 1890, c. 1042, 26 Stat. 500	9
Act of February 16, 1897, c. 235, 29 Stat. 803	9
Act of June 10, 1922, c. 212, 42 Stat. 625	6
Act of June 17, 1926, c. 619, 44 Stat. 1608	9
Private Act of May 14, 1928, 45 Stat. 1830	2
Act of May 22, 1928, c. 694, 45 Stat. 1858	9
World War Emergency Officers' Retirement Act of May 24, 1928, c. 735, 45 Stat. 735	7
Revised Statutes, Section 707	1
Judicial Code, Sec. 242	11
83 Cong. Rec. 9618, 9716, 9718	9
84 Cong. Rec. 11175, 11225, 11226	9
Cong. Rec., 70th Cong., 1st Sess., pp. 6957, 6965, 7424, 8101	8
House Report 1184, 70th Cong., 1st Sess	8
Senate Report 954, 70th Cong., 1st Sess	8

257772—40

In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 394

THE UNITED STATES, PETITIONER

v.

BYRON BROWN RALSTON

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the Court of Claims entered in the above-entitled case.

OPINION BELOW

The opinion of the Court of Claims is not as yet officially reported.

JURISDICTION

The judgment of the Court of Claims was entered June 3, 1940. The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925.

QUESTION PRESENTED

Whether a private act of Congress, providing for the retirement of an officer of the Navy "with

the retired pay and allowance'' of the grade in which he was serving, authorizes or requires the payment of full rental and subsistence allowances.

STATUTE INVOLVED

The private act of Congress of May 14, 1928 (c. 554, 45 Stat. 1830), reads as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the President is authorized to appoint Byron Brown Ralston, formerly lieutenant commander in the United States Navy, a lieutenant commander in the United States Navy and place him upon the retired list of the Navy with the retired pay and allowance of that grade with credit for any purposes for all service to which he was entitled on April 15, 1927; *Provided,* That a duly constituted naval retiring board finds that the said Byron Brown Ralston incurred physical disability incident to the service while on the active list of the Navy: *Provided further,* That no back pay, allowance, or emoluments shall become due as a result of the passage of this Act.
>
> Approved, May 14, 1928.

STATEMENT

The findings of fact of the court below may be summarized as follows:

The respondent, Byron Brown Ralston, a retired lieutenant commander of the United States Navy,

was graduated from the United States Naval Academy on July 5, 1914, and served on active duty in the Navy until April 15, 1927 (Fdg. 1). On April 15, 1917, he underwent an operation for double direct inguinal hernia, and returned to duty three weeks after the operation (Fdg. 2). The respondent was an engineer officer, and his duties involved work of a strenuous nature (Fdg. 2). On several occasions he complained to the medical authorities, but continued his work without further medical care (Fdg. 2). The respondent was unsuccessful in his efforts to obtain a change of duty which would relieve him of engineering work. He submitted to a physical examination, was pronounced fit, and thereafter on January 31, 1927, submitted his resignation (Fdg. 3). On February 25, 1927, he reported for a physical examination before he was released from the service. It was then found that he had a recurrent hernia (Fdg. 3). The acceptance of his resignation was withheld after the physical examination and he was permitted to proceed to the Brooklyn Naval Hospital where his condition was confirmed, but an operation was discouraged (Fdg. 3). On March 30, 1927, a board of medical survey found the hernia to exist but recommended that respondent be returned to active duty (Fdg. 3). On April 15, 1927, respondent's resignation was accepted, at which time he protested to the Navy Department that he should be

ordered before a retiring board because of the recently discovered physical disability (Fdg. 3).

On May 14, 1928, a private act of Congress was approved authorizing the President to appoint the respondent a lieutenant commander in the Navy, and to place him upon the retired list of the Navy with the retired pay and allowance of that grade, provided a duly constituted Navy retiring board found that he had incurred physical disability incident to the service while on the active list of the Navy (Fdg. 4). The respondent duly appeared before a naval retiring board which found him to be disabled, and on May 14, 1928, he was placed on the list of retired officers of the Navy as a lieutenant commander (Fdg. 5).

Since May 14, 1928, the respondent has been on the rolls of the retired list of the Navy, and has received three-quarters of his active duty pay. He has not received subsistence or rental allowances.

Respondent brought suit in the Court of Claims on August 31, 1937, seeking to recover subsistence and rental allowances. The Court of Claims on April 1, 1940, filed an opinion holding that respondent was entitled to recover the full amount of such allowances, but suspended entry of judgment pending a statement from the General Accounting Office of the amount due. On June 3, 1940, after receipt of a report from the General Accounting Office, the court below entered judgment for the respondent in the sum of $15,414.89.

SPECIFICATION OF ERRORS TO BE URGED

The Court of Claims erred:

1. In holding that the private act of Congress of May 14, 1928, authorized and required the payment of rental and subsistence allowances to a naval officer retired under the provisions thereof.

2. In holding that the word "allowance," as used in the special act, comprehended rental and subsistence allowances.

3. In holding that the act was intended to place the respondent in a preferred position over officers retired under general law, in the absence of any showing that the respondent merited such special consideration.

4. In failing to hold that the sole intent of Congress was to restore respondent to the same position in respect of retirement as he would have occupied had not his resignation been submitted and accepted in ignorance of his physical condition.

5. In failing to hold that the act should be interpreted consistently with long established administrative practice.

6. In entering judgment for respondent for rental and subsistence allowances.

REASONS FOR GRANTING THE WRIT

1. The court below held [1] that a private act, providing for the retirement of an officer "with the re-

[1] The court followed its prior decision in *Sweeney* v. *United States*, 82 C. Cls. 640. At the time that case was decided, the Government contemplated petitioning for

tired pay and allowance of that grade [Lieutenant Commander]" entitles such officer to the full amount of the rental and subsistence allowances otherwise payable, under general law and settled administrative practice, only as an incident to active duty. The decision creates a discrimination between officers retired under the general retirement acts and those retired under all similarly phrased private acts. It thus flies in the face of the basic policy embodied in the Act of June 10, 1922 (c. 212, 42 Stat. 625), that the pay and allowances of all similarly situated officers in the uniformed services of the United States should be on a plane of equality; in addition, it subjects the Government to large potential claims founded upon the numerous private acts of like character presently applicable to living beneficiaries.

2. An officer retired under the provisions of general law concededly becomes entitled neither to a rental nor to a subsistence allowance. Nothing in the private act here involved warrants a discrimination with respect to such allowances in favor of respondent. The literal words of the act, its legislative history, and the established administrative practice all are persuasive evidence to the contrary.

(a) The literal words of the act—"with retired pay and allowance"—support our contention; clearly the word "retired" modifies "allowance" as

---

certiorari but was dissuaded because of procedural difficulties which occurred in the course of filing a motion for a new trial.

well as "pay." The term "retired allowance" quite obviously refers to such an allowance as retired officers receive under general law; it follows, then, that neither a subsistence nor a rental allowance was granted to respondent.

The decision of the court below is premised upon its assumption that the words "and allowance," in order to have any meaning, must embrace all allowances to which an officer on *active duty* is entitled. This assumption has no support in fact or logic. In the first place, a contemporaneous act of Congress entitled *retired* officers to such items as free hospitalization and medical care, and described these privileges as allowances.[2] Moreover, even if

---

[2] The World War Emergency Officers' Retirement Act of May 24, 1928, c. 735, 45 Stat. 735, provided that such officers: "* * * shall be entitled to the same privileges as are now or may hereafter be provided for by law or regulations for officers of the Regular Army, Navy, or Marine Corps who have been retired for physical disability incurred in line of duty, and shall be entitled to all hospitalization privileges and medical treatment as are now or may hereafter be authorized by the United States Veterans' Bureau, and shall receive from date of receipt of their application retired pay at the rate of 75 per centum of the pay to which they were entitled at the time of their discharge from their commissioned service, except pay under the Act of May 18, 1920: *Provided*, That all pay and allowances to which such persons or officers may be entitled under the provisions of this law shall be paid solely out of the military and naval compensation appropriation fund * * *."

This act was passed over a presidential veto on May 24, 1928, ten days after the approval of the act here involved. It demonstrates that Congress attributed no such scope to the word "allowance" as has been given to it by the court below.

medical care were not an allowance to which retired officers were entitled, there would still be no reason to extend the act in question to cover allowances incident to *active duty;* the words "and allowance" there might well have been intended to cover such allowances as subsequently enacted general laws might confer upon retired officers.

(b) The legislative history of the act in question dispells any lingering question as to its meaning. It indicates that the sole purpose of Congress was to redress the grievance created by the submission and acceptance of respondent's resignation in ignorance of his true physical condition; accordingly, Congress authorized the President to place respondent in the same position that would have been his had his resignation not been tendered and accepted. House Report No. 1184; Senate Report No. 954, 70th Cong., 1st. Sess.[3] Nowhere is there even a suggestion that respondent be given any extraordinary benefit denied to other officers retiring under the provisions of general law. Indeed, private acts disclosing an intention to confer special benefits as to allowances have consistently been vetoed, and the use of the retirement system as a means "of bestowing a private benefit or gratuity upon an individual not entitled to such under the general laws" has been declared contrary to sound

[3] The bill passed both houses of Congress without debate or explanation other than that made by the reports. Cong. Rec. 70th Cong., 1st Sess., pp. 6957, 6965, 7424, and 8101.

public policy. Veto Message on S. 2408, 83 Cong. Rec. 9618. See also Veto Messages quoted in 83 Cong. Rec. 9618, 9716, 9718; 84 Cong. Rec. 11175, 11225, 11226.

(c) Settled administrative practice also militates against the result reached by the court below. The terminology here chosen to express the intention of Congress is neither unique nor modern. Private acts employing substantially similar language have been in use for many years; yet rental and subsistence allowances have uniformly been denied to officers retiring under such acts.[4] Clearly there is a presumption that Congress confirmed this administrative interpretation and legislated with it in mind. *McFeely* v. *Commissioner,* 296 U. S. 102, 108. Compare *Inland Waterways Corp.* v. *Young,* No. 6, decided March 25, 1940.

We submit that the decision of the court below is plainly erroneous.

3. This immediate case, it is true, involves the construction of a single private act of Congress. But the question presented is none the less of substantial general importance.

---

[4] A few of the private acts retiring officers with the "pay and emoluments" or "pay and allowances" of the grade, are: Act of January 28, 1881, c. 30, 21 Stat. 321; Act of September 29, 1890, c. 1042, 26 Stat. 500; Act of February 16, 1897, c. 235, 29 Stat. 803; Act of June 17, 1926, c. 619, 44 Stat. 1608; and the Act of May 22, 1928, c. 694, 45 Stat. 1858. In none of these instances did the officer retired thereunder receive rental and subsistence allowances. (Vouchers to this effect were introduced in evidence in the Court of Claims.)

It may be observed, at the outset, that substantially similar terminology has been employed by Congress for many years and in many instances with the intention of reaching a result in accordance with the result here advocated by the Government. See p. 9, *supra*. In these circumstances, surely, it is not enough to say that Congress, if it wills, can adopt other terminology.

Moreover, we are advised, as a result of the decision below, the potential claims that may be brought against the Government by some 31 retired officers, who are the beneficiaries of similar private acts, will amount to between $500,000 and $900,000, according to the number of dependents such officers may have.[5] In addition, the Comp-

[5] Five cases, now pending in the Court of Claims (Nos. 43697, 43670, 43644, 43642, 43641), arise upon the following acts: Act of April 26, 1928, 45 Stat. 1729; Act of May 14, 1928, 45 Stat. 1830; Act of April 26, 1928, 45 Stat. 1729; Act of February 27, 1929, 45 Stat. 2330; Act of June 23, 1926, 44 Stat. 1615; Act of June 30, 1930, 46 Stat. 1951; Act of January 30, 1929, 45 Stat. 2043; Act of February 9, 1931, 46 Stat. 1978.

Ten officers were retired under these other acts: Act of March 4, 1923, 42 Stat. 1500; Act of March 3, 1925, 43 Stat. 1590; Act of April 17, 1926, 44 Stat. 1459; Act of June 17, 1926, 44 Stat. 1608; Act of March 3, 1927, 44 Stat. 1838; Act of May 22, 1928, 45 Stat. 1858; Act of May 28, 1928, 45 Stat. 1999; Act of February 28, 1929, 45 Stat. 2335; Act of December 21, 1929, 46 Stat. 1633; Act of June 2, 1930, 46 Stat. 1852.

Sixteen officers were retired under the provisions of the Act of July 9, 1918, 40 Stat. 889, and were subsequently appointed and retired under the Act of March 3, 1927, 44 Stat. 1350.

troller General estimates that "many potential claims" "for large sums" may be expected to arise under the Act of May 13, 1908, 35 Stat. 128, and the Act of June 4, 1920, 41 Stat. 762, governing, respectively, the retirement of every chief of a bureau in the Navy Department and every chief of a branch, with four years' service, in the Army.[6]

Finally, in exercising its discretionary appellate jurisdiction, this Court may appropriately consider the circumstance that the Court of Claims by statute has exclusive jurisdiction of these controversies and that, accordingly, no matter how erroneous its decision, a conflict will never develop.[7] Compare *Paramount Publix Corp.* v. *American Tri-Ergon Corp.*, 293 U. S. 528, 294 U. S. 564.

CONCLUSION

It is respectfully submitted that for the reasons stated this petition for a writ of certiorari should be granted.

FRANCIS BIDDLE,
Solicitor General.

SEPTEMBER 1940.

---

[6] Both acts provide that every such officer who may be retired shall be retired with the "rank, pay, and allowances authorized by law" for his grade.

[7] The exclusive jurisdiction conferred upon the Court of Claims to determine pay cases (28 U. S. C. Sec. 41 (20)) should be viewed in its original framework, which, irrespective of the amount involved, permitted an appeal to this Court by the Government as of right. Revised Statutes, Sec. 707; Section 242 of the Judicial Code.

U. S. GOVERNMENT PRINTING OFFICE: 1940